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HOUSE BILL NO. 715

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources on February 9, 2022)

(Patron Prior to Substitute—Delegate Krizek)

A BILL to amend and reenact §§ 5.1-7, 10.1-1003, 10.1-1188, 10.1-2206.1, 10.1-2214, 10.1-2305, 56-46.1, and 62.1-266 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 10.1-104.02, 10.1-1186.3:1, 10.1-2205.1, and 28.2-104.01, relating to consultation with federally recognized Tribal Nations; permits and reviews with potential impacts on environmental, cultural, and historic resources.

Be it enacted by the General Assembly of Virginia:

1. That §§ 5.1-7, 10.1-1003, 10.1-1188, 10.1-2206.1, 10.1-2214, 10.1-2305, 56-46.1, and 62.1-266 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 10.1-104.02, 10.1-1186.3:1, 10.1-2205.1, and 28.2-104.01 as follows:

§ 5.1-7. Licensing of airports and landing areas.

Except as provided in § 5.1-7.2, every person, before operating an airport or landing area or adding or extending a runway, shall first secure from the Department a license. The application therefor shall be made on the form prescribed and furnished by the Department and shall be accompanied by a fee not exceeding $100.

Such license shall be issued for a period not to exceed seven years and shall be renewed every seven years. Before issuing such license, the Department shall require the holder of such license to furnish proof of financial responsibility prescribed in Chapter 8.2 (§ 5.1-88.7 et seq.).

It shall be unlawful for any person to operate any airport or landing area which is open to the general public for the landing or departure of any aircraft until a license therefor shall be issued by the Department.

Before issuing such license for the establishment of a new airport, the Department shall investigate the location of such airport or landing area with the relation to its proximity to and its runway orientation in relation to any other airport or landing area and shall provide for the safety of civil aircraft alighting thereon or departing therefrom. If the proposed airport or landing area shall be so situated as to endanger aircraft using the same or any other airport or landing area in close proximity, and if proper provisions have not been made in all other respects for the safety of aircraft alighting thereon or departing therefrom, the license shall not be granted. To be licensed, an airport required to be licensed under § 5.1-7.2 must meet this criterion and any applicable requirement provided for in regulation promulgated under this section, but no others.

The Board may, by regulation, adopt any other requirements for licensure that are related to the safety of civil aircraft using such airport or landing area. Any airport having a license issued prior to October 1, 1995, and not meeting one or more minimum standards as defined in Part III (24VAC5-20-120 et seq.) of the Virginia Aviation Regulations, shall be exempt from having to comply with those noncomplying standards for as long as the airport remains an active public-use facility unless those noncomplying standards are caused by natural growth. Should such airport cease to be open to the public for one year, and subsequently reopen, it shall be required to comply with all applicable minimum standards for licensure.

In addition to the above safety requirements, before a license is initially issued, the Department shall consider the reviews and comments of appropriate state agencies coordinated by the Department of Environmental Quality, and shall cause a public hearing to be held concerning the economic, social and environmental effects of the location or runway orientation of the airport or landing area if the facility is listed in the Virginia Air Transportation System Plan; however, such coordinated review by the Department of Environmental Quality shall not exceed 90 days after the Department has requested review by the Department of Environmental Quality. The public hearing required by this section shall be conducted by the Department of Environmental Quality in the jurisdiction in which the airport or landing area is located, after publication of notice of the hearing in a newspaper of general circulation in such jurisdiction at least 10 days in advance of such hearing.

Any license issued shall describe the number of runways, the length and orientation of each runway and/or, if appropriate, the landing area.

If a runway is to be extended or new runways are to be added, a revised license shall be applied for from the Department. If the airport or landing area is listed in the Virginia Air Transportation System Plan, the Department shall consider the reviews and comments of appropriate state agencies, coordinated by the Department of Environmental Quality, and shall cause a public hearing to be held concerning the economic, social and environmental effects of such changes to the license. *If the proposed license*

revision has tribal implications, as defined in § 10.1-104.02, the Department of Environmental Quality shall consult with Tribal Nations in the Commonwealth pursuant to the policies and procedures adopted by the Department of Environmental Quality pursuant to § 10.1-1186.3:1.

Whenever a public hearing is called for herein, if there has been a public hearing associated with the development of any environmental documents to comply with the receipt of federal funds, the Department and the Department of Environmental Quality may rely on such document or hearing in carrying out their respective duties set out in this section.

If an airport or landing area cannot meet the requirements for licensure that have been adopted by the Virginia Aviation Board, or having met those requirements cannot maintain compliance, the Department may issue conditional licenses to allow time for the airport or landing areas to take steps to meet those requirements or may revoke any license issued, if requirements for licensure are not met or cannot be met.

Any party aggrieved by the granting or refusal to grant any such license shall have a right of appeal to the circuit court of the jurisdiction where the airport or landing area is to be located, which appeal shall be filed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

All airports or landing areas that hold licenses or permits shall be issued new licenses, without charge, on or before October 1, 1995, describing the number, length and orientation of the runway or runways or, if appropriate, the landing area, which shall be valid for up to seven years. The length of the new license term may be staggered so that all licenses will not become renewable at the same time. If any airport landing area does not meet the current requirements for licensure, a new license may be issued.

§ 10.1-104.02. Policies for consultation with federally recognized Tribal Nations.

A. The Department shall develop policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and culturally appropriate written consultation with potentially impacted federally recognized Tribal Nations in the Commonwealth regarding major permits with tribal implications issued by the Department. The Department shall designate an agency official who has the authority to define agency actions appropriate for consultation, evaluate the adequacy of consultation, and ensure that agency consultation practices are consistent. The definition of actions appropriate for consultation shall be developed in consultation with federally recognized Tribal Nations in the Commonwealth and shall include projects and actions that may have tribal implications. The policy shall define an appropriate means of notifying federally recognized Tribal Nations in the Commonwealth based on tribal preferences, ensure that sufficient information and time is provided for the Tribal Nations to develop informed opinions about the proposed action, and establish procedures for the Department to provide feedback to the Tribal Nations to explain how their input was considered. Should feedback from the Tribal Nations not be received by the deadline for state approval for a major permit, the consultation provisions of this section shall be deemed fulfilled.

B. For the purposes of this section, an action or project with "tribal implications" means: (i) environmental impact reports for major state projects, prepared pursuant to § 10.1-1188; (ii) State Corporation Commission project reports, prepared pursuant to § 56-46.1 and 20VAC5-302-25; (iii) Virginia Department of Aviation environmental reports prepared pursuant to § 5.1-7; (iv) Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia, prepared pursuant to 9VAC15-20; (v) Federal Consistency Determinations prepared pursuant to § 307 of the federal Coastal Zone Management Act of 1972 (14 U.S.C. § 1456); (vi) ground water withdrawal permits for ground water withdrawals greater than one million gallons per day, issued pursuant to § 62.1-266; (vii) the designation of historic districts, buildings, structures, or sites as historic landmarks pursuant to § 10.1-2206.1; (viii) Burial Permits for Relocation of Human Remains, issued pursuant to § 10.1-2305; (ix) Cave Collection Permits, issued pursuant to the Cave Protection Act (§ 10.1-1000 et seq.), for permit applications pertaining to the study, extraction, or removal of any archaeological or historic feature in a cave; (x) local government notifications for new and existing impoundment structures or dams pursuant to 4VAC50-20-58; (xi) Virginia Regulated Impounding Structures Permits issued pursuant to 4VAC50-20-70 and 4VAC50-20-80; and (xii) Underwater Recovery Permits issued pursuant to § 10.1-2214.

§ 10.1-1003. Permits for excavation and scientific investigation; how obtained; penalties.

A. In addition to the written permission of the owner required by § 10.1-1004 a permit shall be obtained from the Department of Conservation and Recreation prior to excavating or removing any archaeological, paleontological, prehistoric, or historic feature of any cave. The Department shall issue a permit to excavate or remove such a feature if it finds, *after consultation pursuant to § 10.1-104.02 with any federally recognized Tribal Nation in the Commonwealth for which the permit may have tribal implications and* with the concurrence of the Director of the Department of Historic Resources, that it is in the best interest of the Commonwealth and that the applicant meets the criteria of this section. The permit shall be issued for a period of two years and may be renewed upon expiration. Such permit shall not be transferable; however, the provisions of this section shall not preclude any person from working

under the direct supervision of the permittee.

B. All field investigations, explorations, or recovery operations undertaken under this section shall be carried out under the general supervision of the Department and in a manner to ensure that the maximum amount of historic, scientific, archaeologic, and educational information may be recovered and preserved in addition to the physical recovery of objects.

C. A person applying for a permit pursuant to this section shall:

1. Be a historic, scientific, or educational institution, or a professional or amateur historian, biologist, archaeologist or paleontologist, who is qualified and recognized in these areas of field investigations.

2. Provide a detailed statement to the Department giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work.

3. Provide data and results of any completed excavation, study, or collection at the first of each calendar year.

4. Obtain the prior written permission of the owner if the site of the proposed excavation is on privately owned land.

5. Carry the permit while exercising the privileges granted.

D. Any person who fails to obtain a permit required by subsection A hereof shall be guilty of a Class 1 misdemeanor. Any violation of subsection C hereof shall be punished as a Class 3 misdemeanor, and the permit shall be revoked.

E. The provisions of this section shall not apply to any person in any cave located on his own property.

§ 10.1-1186.3:1. Policies for consultation with federally recognized Tribal Nations.

The Department shall develop policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and culturally appropriate written consultation with potentially impacted federally recognized Tribal Nations in the Commonwealth regarding major permits with tribal implications, as defined in § 10.1-104.02, issued by the Department. The Department shall designate an agency official who has the authority to define agency actions appropriate for consultation, evaluate the adequacy of consultation, and ensure that agency consultation practices are consistent. The definition of actions appropriate for consultation shall be developed in consultation with federally recognized Tribal Nations in the Commonwealth and shall include actions that may have tribal implications. The policy shall define an appropriate means of notifying federally recognized Tribal Nations in the Commonwealth based on tribal preferences, ensure that sufficient information and time is provided for the Tribal Nations in the Commonwealth to develop informed opinions about the proposed action, and establish procedures for the Department to provide feedback to the Tribal Nations in the Commonwealth to explain how their input was considered. Should feedback from the Tribal Nations not be received by the deadline for state approval for a major permit, the consultation provisions of this section shall be deemed fulfilled.

§ 10.1-1188. State agencies to submit environmental impact reports on major projects.

A. All state agencies, boards, authorities and commissions or any branch of the state government shall prepare and submit an environmental impact report to the Department on each major state project.

"Major state project" means the acquisition of an interest in land for any state facility construction, or the construction of any facility or expansion of an existing facility which is hereafter undertaken by any state agency, board, commission, authority or any branch of state government, including public institutions of higher education, which costs $500,000 or more. For the purposes of this chapter, authority shall not include any industrial development authority created pursuant to the provisions of Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2 or Chapter 643, as amended, of the 1964 Acts of Assembly. Nor shall it include the Virginia Port Authority created pursuant to the provisions of § 62.1-128, unless such project is a capital project that costs in excess of $5 million. Nor shall authority include any housing development or redevelopment authority established pursuant to state law. For the purposes of this chapter, branch of state government shall include any county, city or town of the Commonwealth only in connection with highway construction, reconstruction, or improvement projects affecting highways or roads undertaken by the county, city, or town on projects estimated to cost more than $2 million. For projects undertaken by any locality costing more than $500,000 and less than $2 million, the locality shall consult with the Department of Historic Resources to consider and make reasonable efforts to avoid or minimize impacts to historic resources if the project involves a new location or a new disturbance that extends outside the area or depth of a prior disturbance, or otherwise has the potential to affect such resources adversely.

Such environmental impact report shall include, but not be limited to, the following:

1. The environmental impact of the major state project, including the impact on wildlife habitat;

2. Any adverse environmental effects which cannot be avoided if the major state project is undertaken;

3. Measures proposed to minimize the impact of the major state project;

4. Any alternatives to the proposed construction; ~~and~~

5. Any irreversible environmental changes which would be involved in the major state project*; and*

6. For environmental impact reports of major state projects that have tribal implications, as defined in § 10.1-104.02, a record of consultation with any federally recognized Tribal Nation that may be impacted by the major state project. The record of consultation shall include the information provided to the Tribal Nation, any feedback or response received by the Tribal Nation, and a description of how the impact was considered or incorporated into the major state project.

For the purposes of subdivision 4, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

B. For purposes of this chapter, this subsection shall only apply to the review of highway and road construction projects or any part thereof. The Secretaries of Transportation and Natural and Historic Resources shall jointly establish procedures for review and comment by state natural and historic resource agencies of highway and road construction projects. Such procedures shall provide for review and comment on appropriate projects and categories of projects to address the environmental impact of the project, any adverse environmental effects which cannot be avoided if the project is undertaken, the measures proposed to minimize the impact of the project, any alternatives to the proposed construction, and any irreversible environmental changes which would be involved in the project.

§ 10.1-2205.1. Policies for consultation with federally recognized Tribal Nations.

The Department shall develop policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and culturally appropriate written consultation with federally recognized Tribal Nations in the Commonwealth regarding major permits with tribal implications, as defined in § 10.1-104.02, issued by the Department. The Department shall designate an agency official who has the authority to define agency actions appropriate for consultation, evaluate the adequacy of consultation, and ensure that agency consultation practices are consistent. The definition of actions appropriate for consultation shall be developed in consultation with federally recognized Tribal Nations in the Commonwealth and shall include actions that have tribal implications. The policy shall define an appropriate means of notifying federally recognized Tribal Nations in the Commonwealth based on tribal preferences, ensure that sufficient information and time is provided for the Tribal Nations in the Commonwealth to develop informed opinions about the proposed action, and establish procedures for the Department to provide feedback to the Tribal Nations in the Commonwealth to explain how their input was considered. Should feedback from the Tribal Nations not be received by the deadline for state approval for a major permit, the consultation provisions of this section shall be deemed fulfilled.

§ 10.1-2206.1. Procedure for designating a historic district, building, structure, or site as a historic landmark; National Register of Historic Places, National Historic Landmarks; historic district defined.

A. In any county, city, or town where the Board proposes to designate a historic district, building, structure, object, or site as a historic landmark, or where the Director proposes to nominate property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark, the Department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent, of property proposed to be so designated or nominated, and to the owners, or their agents, of all abutting property and property immediately across the street or road from the property. *The Department shall also consult, pursuant to § 10.1-2205.1, with federally recognized Tribal Nations for whom the proposed action may have tribal implications, as defined in § 10.1-104.02, and Tribal Nations in the Commonwealth who wish to be consulted.*

B. Prior to the designation or nomination of a historic district, the Department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the Board and to the Director. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The Department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days nor more than twenty-one days after the second publication of the notice in such newspaper. In addition to publishing the notice, the Department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent, of each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road from the included property. Notice required to be given to owners by this subsection may be given concurrently with the notice required to be given to the owners by subsection A. The Department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

C. Any written notice required to be given by the Department to any person shall be deemed to comply with the requirements of this section if sent by first class mail to the last known address of such person as shown on the current real estate tax assessment books, provided that a representative of the Department shall make an affidavit that such mailings have been made.

D. The local governing body and property owners shall have thirty days from the date of the notice required by subsection A, or, in the case of a historic district, thirty days from the date of the public hearing required by subsection B to provide comments and recommendations, if any, to the Board and to the Director.

E. For the purposes of this chapter, a historic district means a geographically definable area which contains a significant concentration of historic buildings, structures or sites having a common historical, architectural, archaeological, or cultural heritage, and which may contain local tax parcels having separate owners. Contributing properties within a registered district are historic landmarks by definition.

F. All regulations promulgated by the Director pursuant to § 10.1-2202 and all regulations promulgated by the Board pursuant to § 10.1-2205 shall be consistent with the provisions of this section.

§ 10.1-2214. Underwater historic property; penalty.

A. "Underwater historic property" means any submerged shipwreck, vessel, cargo, tackle or underwater archaeological specimen, including any object found at underwater refuse sites or submerged sites of former habitation, that has remained unclaimed on the state-owned subaqueous bottom and has historic value as determined by the Department.

B. Underwater historic property shall be preserved and protected and shall be the exclusive property of the Commonwealth. Preservation and protection of such property shall be the responsibility of all state agencies including but not limited to the Department, the Virginia Institute of Marine Science, and the Virginia Marine Resources Commission. Insofar as may be practicable, such property shall be preserved, protected and displayed for the public benefit within the county or city within which it is found, or within a museum operated by a state agency.

C. It shall be unlawful for any person, firm or corporation to conduct any type of recovery operations involving the removal, destruction or disturbance of any underwater historic property without first applying for and receiving a permit from the Virginia Marine Resources Commission to conduct such operations pursuant to § 28.2-1203. If the Virginia Marine Resources Commission, *after consultation pursuant to § 28.2-104.01 with any federally recognized Tribal Nation in the Commonwealth for whom the permit may have tribal implications, as defined in § 10.1-104.02, and* with the concurrence of the Department and in consultation with the Virginia Institute of Marine Science and other concerned state agencies, finds that granting the permit is in the best interest of the Commonwealth, it shall grant the applicant a permit. The permit shall provide that all objects recovered shall be the exclusive property of the Commonwealth. The permit shall provide the applicant with a fair share of the objects recovered, or in the discretion of the Department, a reasonable percentage of the cash value of the objects recovered to be paid by the Department. Title to all objects recovered shall be retained by the Commonwealth unless or until they are released to the applicant by the Department. All recovery operations undertaken pursuant to a permit issued under this section shall be carried out under the general supervision of the Department and in accordance with § 28.2-1203 and in such a manner that the maximum amount of historical, scientific, archaeological and educational information may be recovered and preserved in addition to the physical recovery of items. The Virginia Marine Resources Commission shall not grant a permit to conduct operations at substantially the same location described and covered by a permit previously granted if recovery operations are being actively pursued, unless the holder of the previously granted permit concurs in the grant of another permit.

D. The Department may seek a permit pursuant to this section and § 28.2-1203 to preserve and protect or recover any underwater historic property.

E. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor and, in addition, shall forfeit to the Commonwealth any objects recovered.

§ 10.1-2305. Permit required for the archaeological excavation of human remains.

A. It shall be unlawful for any person to conduct any type of archaeological field investigation involving the removal of human skeletal remains or associated artifacts from any unmarked human burial regardless of age of an archaeological site and regardless of ownership without first receiving a permit from the Director.

B. Where unmarked burials are not part of a legally chartered cemetery, archaeological excavation of such burials pursuant to a permit from the Director shall be exempt from the requirements of §§ 57-38.1 and 57-39. However, such exemption shall not apply in the case of human burials within formally chartered cemeteries that have been abandoned.

C. The Department shall be considered an interested party in court proceedings considering the abandonment of legally constituted cemeteries or family graveyards with historic significance. A permit from the Director is required if archaeological investigations are undertaken as a part of a

court-approved removal of a cemetery.

D. The Board shall promulgate regulations implementing this section that provide for appropriate public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the scientific quality of the research conducted on the remains, and the appropriate disposition of the remains upon completion of the research. *Such regulations shall also require consultation pursuant to § 10.1-2205.1 with federally recognized Tribal Nations in the Commonwealth for whom the permit has tribal implications, as defined in § 10.1-104.02. When a burial permit would result in the disturbance of a burial site of an individual culturally affiliated with a particular federally recognized Tribal Nation in the Commonwealth, the consent of the Tribal Nation is required before the permit may be issued.* The Department may carry out such excavations and research without a permit, provided that it has complied with the substantive requirements of the regulations promulgated pursuant to this section.

E. Any interested party may appeal the Director's decision to issue a permit or to act directly to excavate human remains to the local circuit court. Such appeal must be filed within fourteen days of the Director's decision.

F. For purposes of this section, "culturally affiliated" has the same definition as provided in the federal Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 (2)) and its regulations. If doubt exists as to cultural affiliation, the Tribal Nations potentially affiliated shall make the determination.

§ 28.2-104.01. Policies for consultation with federally recognized Tribal Nations.

The Commission shall develop policies and procedures to ensure an opportunity for meaningful and culturally appropriate written consultation with federally recognized Tribal Nations in the Commonwealth regarding permits issued and reviews conducted by the Commission that may have tribal implications, as defined in § 10.1-104.02. The Commission shall designate an agency official who has the authority to define agency actions appropriate for consultation, evaluate the adequacy of consultation, and ensure that agency consultation practices are consistent. The definition of actions appropriate for consultation shall be developed in consultation with federally recognized Tribal Nations in the Commonwealth and shall include actions that may have tribal implications. The policy shall define an appropriate means of notifying federally recognized Tribal Nations in the Commonwealth based on tribal preferences, ensure that sufficient information and time is provided for the Tribal Nations in the Commonwealth to develop informed opinions about the proposed action, and establish procedures for the Commission to provide feedback to the Tribal Nations in the Commonwealth to explain how their input was considered.

§ 56-46.1. Commission to consider environmental, economic and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth, including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Clean Energy Policy set forth in § 45.2-1706.1, and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

B. Subject to the provisions of subsection J, no electrical transmission line of 138 kilovolts or more

shall be constructed unless the State Corporation Commission shall, after at least 30 days' advance notice by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, (ii) written notice to the governing body of each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route including a digital geographic information system (GIS) map provided by the public utility showing the location of the proposed route. The Commission shall make GIS maps provided under this subsection available to the public on the Commission's website. Such notices shall be in addition to the advance notice to the chief administrative officer of the county or municipality required pursuant to § 15.2-2202.

As a condition to approval the Commission shall determine that the line is needed and that the corridor or route chosen for the line will avoid or reasonably minimize adverse impact to the greatest extent reasonably practicable on the scenic assets, historic resources recorded with the Department of Historic Resources, *cultural resources identified by Tribal Nations,* and environment of the area concerned. To assist the Commission in this determination, as part of the application for Commission approval of the line, the applicant shall summarize its efforts to avoid or reasonably minimize adverse impact to the greatest extent reasonably practicable on the scenic assets, historic resources recorded with the Department of Historic Resources, and environment of the area concerned. In making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation. If the local comprehensive plan of an affected county or municipality designates corridors or routes for electric transmission lines and the line is proposed to be constructed outside such corridors or routes, in any hearing the county or municipality may provide adequate evidence that the existing planned corridors or routes designated in the plan can adequately serve the needs of the company. Additionally, the Commission shall consider, upon the request of the governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the underground placement of the line and (b) any potential impediments to timely construction of the line.

C. If, prior to such approval, any interested party shall request a public hearing, the Commission shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as may be designated by the Commission. In any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

If, prior to such approval, written requests therefor are received from the governing body of any county or municipality through which the line is proposed to be built or from 20 or more interested parties, the Commission shall hold at least one hearing in the area that would be affected by construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made available for public inspection at a convenient location in the area for a reasonable time before such local hearing.

D. As used in this section, unless the context requires a different meaning:

"Environment" or "environmental" shall be deemed to include in meaning "historic," as well as a consideration of the probable effects of the line on the health and safety of the persons in the area concerned.

"Interested parties" shall include the governing bodies of any counties or municipalities through which the line is proposed to be built, and persons residing or owning property in each such county or municipality.

"Public utility" means a public utility as defined in § 56-265.1.

"Qualifying facilities" means a cogeneration or small power production facility which meets the criteria of 18 C.F.R. Part 292.

"Reasonably accommodate requests to wheel or transmit power" means:

1. That the applicant will make available to new electric generation facilities constructed after January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total megawatts of the additional transmission capacity created by the proposed line, for the purpose of wheeling to public utility purchasers the power generated by such qualifying facilities and other nonutility facilities which are awarded a power purchase contract by a public utility purchaser in compliance with applicable state law or regulations governing bidding or capacity acquisition programs for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant

will extend only to those requests for wheeling service made within the 12 months following certification by the State Corporation Commission of the transmission line and with effective dates for commencement of such service within the 12 months following completion of the transmission line; and

2. That the wheeling service offered by the applicant, pursuant to subdivision D 1, will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L. 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line, the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include in its agreements for such wheeling service.

E. In the event that, at any time after the giving of the notice required in subsection B, it appears to the Commission that consideration of a route or routes significantly different from the route described in the notice is desirable, the Commission shall cause notice of the new route or routes to be published and mailed in accordance with subsection B. The Commission shall thereafter comply with the provisions of this section with respect to the new route or routes to the full extent necessary to give affected localities, *federally recognized Tribal Nations in the Commonwealth,* and interested parties in the newly affected areas the same protection afforded to affected localities and interested parties affected by the route described in the original notice.

F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances with respect to such transmission line.

G. The Commission shall enter into a memorandum of agreement with the Department of Environmental Quality regarding the coordination of their reviews of the environmental impact of electric generating plants and associated facilities. *If the proposed plants or associated facilities have tribal implications, as defined in § 10.1-104.02, the memorandum of agreement shall include consultation with such Tribal Nation in the Commonwealth pursuant to the policies and procedures adopted by the Department of Environmental Quality pursuant to §10.1-1186.3:1.*

H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from the Commission for any electric generating facility, electric transmission line, natural or manufactured gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility that is subject to issuance by any agency or board within the Secretariat of Natural and Historic Resources, may request a pre-application planning and review process. In any such request to the Commission or the Secretariat of Natural and Historic Resources, the applicant shall identify the proposed energy facility for which it requests the pre-application planning and review process. The Commission, the Department of Environmental Quality, the Marine Resources Commission, the Department of Wildlife Resources, the Department of Historic Resources, the Department of Conservation and Recreation, *federally recognized Tribal Nations in the Commonwealth for whom the proposed facility may have tribal implications, as defined in § 10.1-104.02,* and other appropriate agencies of the Commonwealth shall participate in the pre-application planning and review process. Participation in such process shall not limit the authority otherwise provided by law to the Commission or other agencies or boards of the Commonwealth. The Commission and other participating agencies of the Commonwealth may invite federal and local governmental entities charged by law with responsibility for issuing permits or approvals to participate in the pre-application planning and review process. Through the pre-application planning and review process, the applicant, the Commission, and other agencies and boards shall identify the potential impacts and approvals that may be required and shall develop a plan that will provide for an efficient and coordinated review of the proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely to be required based on the information available, (b) a specific plan and preliminary schedule for the different reviews, (c) a plan for coordinating those reviews and the related public comment process, and (d) designation of points of contact, either within each agency or for the Commonwealth as a whole, to facilitate this coordination. The plan shall be made readily available to the public and shall be maintained on a dedicated website to provide current information on the status of each component of the plan and each approval process including opportunities for public comment.

I. The provisions of this section shall not apply to the construction and operation of a small renewable energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1.

J. Approval under this section shall not be required for any transmission line for which a certificate of public convenience and necessity is not required pursuant to subdivision A of § 56-265.2.

§ 62.1-266. Ground water withdrawal permits.

A. The Board may issue any ground water withdrawal permit upon terms, conditions, and limitations necessary for the protection of the public welfare, safety, and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and

shall contain such information, consistent with this chapter, as the Board deems necessary.

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed term not to exceed 15 years. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The permittee has violated any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations that, in the opinion of the Board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;

3. The activity for which the permit was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the permit; or

4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary to protect human health or the environment.

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of the Board with notification from the governing body of the locality in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

H. The Board may adopt regulations to develop a general permit for the regulation of irrigation withdrawals from the surficial aquifer greater than 300,000 gallons in any one month. Regulations adopted pursuant to this subsection shall provide that withdrawals from the surficial aquifer may be permitted under either a general permit developed pursuant to this subsection or another ground water withdrawal permit.

I. The Board shall promulgate regulations establishing criteria for determining whether the quantity or quality of the ground water in a surficial aquifer is adequate to meet a proposed beneficial use. Such regulations shall specify the information required to be submitted to the Department by a golf course or any other person seeking a determination from the Department that either the quantity or quality of the ground water in a surficial aquifer is not adequate to meet a proposed beneficial use. Such regulations shall require the Department, within 30 days of receipt of a complete request, to make a determination as to the adequacy of the quantity or quality of the ground water in a surficial aquifer.

J. If the proposed permit will allow for groundwater withdrawals greater than one million gallons per day, the Board shall ensure that the Department consults with any potentially impacted federally recognized Tribal Nation pursuant to the policies and procedures adopted by the Department of Environmental Quality pursuant to § 10.1-1186.3:1. Should feedback from the Tribal Nations not be received by the deadline for state approval for a major permit, the consultation provisions of this section shall be deemed fulfilled.

2. That by September 1, 2022, and in consultation with nationally recognized Tribal Nations located in the Commonwealth, the Secretary of Natural and Historic Resources shall develop a list of localities in which federally recognized Tribal Nations shall be consulted to effectuate the provisions of this act.

3. That the Department of Environmental Quality shall update its regulations regarding (i) environmental impact assessments for oil or gas well drilling operations in Tidewater Virginia, (ii) local government notifications for new and existing impoundment structures or dams, and (iii)

permits for construction or alteration of Virginia regulated impounding structures to require consultation as set forth in § 10.1-1186.3:1 of the Code of Virginia, as created by this act.